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June 30, 1998

VIA HAND DELIVERY

Magalie R. Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996: Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities, WT Docket No. 96-198

Dear Ms. Salas:

Enclosed for filing are an original and six copies of SBC Communications Inc.'s Comments in the above-captioned proceeding.

Please date-stamp and return the extra copy to the individual delivering this package.

Sincerely,

Courtney S. Elwood

Enclosures

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of Section 255 of the	)	
Telecommunications Act of 1996	)	
	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services,	)	
Telecommunications Equipment, and	)	
Customer Premises Equipment	)	
by Persons With Disabilities	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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EXECUTIVE SUMMARY

SBC Communications Inc. ("SBC") is committed to ensuring that individuals with disabilities can enjoy the benefits of telecommunications service and products. The best way to accomplish this is for the Commission to allow the telecommunications industry the flexibility to innovate and marshal its resources toward that goal. To a fair extent, the FCC has adopted this hands-off approach in implementing Section 255, and, as a result, SBC largely agrees with the proposals in the Notice of Proposed Rulemaking.

SBC commends the FCC's adherence to the plain statutory language and to common sense in defining the terms and scope of the provision. Specifically, while SBC has committed itself and its subsidiaries to designing information services to be accessible to individuals with disabilities, the FCC is correct in concluding that the statute does not mandate such action. By its express terms, Section 255 extends only to telecommunications service and equipment. The FCC however is also correct in reading the terms "telecommunications provider" and "equipment manufacturer" broadly to include resellers and any "final assembler" of a product, whether foreign or domestic.

In addition, SBC supports the Commission's pragmatic approach to defining the terms "accessible to and usable by" and "readily achievable." SBC agrees that the term "accessible to and usable by" expresses the single, basic idea that individuals with disabilities must be able to *actually use* the product or service.

The FCC's interpretation of "readily achievable" likewise should not be overly theoretical. Whether an action is "readily achievable" will, as the FCC concluded, "be driven by the facts of

the particular cases" and a consideration of the proposal's feasibility, practicality, and expense. Notice of Proposed Rulemaking, Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, ¶ 99 (rel. Apr. 20, 1998) ("NPRM"). This analysis should occur only once -- at the time that the product or service is initially developed. "[O]nce a product is introduced in the market without accessibility features that were not readily achievable at the time [of development], Section 255 does not require that the product be modified to incorporate subsequent, readily achievable features." Id. ¶ 120.

SBC respectfully disagrees with some of the FCC's recommendations for implementing subsection (d) of Section 255. That provision requires that a manufacturer or provider ensure that its equipment or service is "compatible" with existing peripheral devices or specialized CPE which are "commonly used" by individuals with disabilities. 47 U.S.C. § 255(d). The FCC should avoid defining "commonly used" with reference to the feature's cost or to its use in a State equipment distribution program. For one thing, cost would be relevant only in comparing devices that serve a similar function. More importantly, by considering cost, the FCC may be placed in the inappropriate position of having individuals without disabilities assess the value of a feature to a person with disabilities.

Whether a product is used by a State's equipment distribution program is also an unreliable indication of the product's use. Some State programs are slow to introduce new and popular devices and slow to take obsolete products out of circulation. SBC therefore

recommends that the FCC adhere to the ordinary meaning of "commonly used" -- as a reference to the number of actual users of a product relative to the number of potential users.

SBC also cannot support the FCC's proposal to define "compatib[le]" in terms of narrowly defined "criteria." NPRM ¶¶ 91-92. By prescribing "criteria," the FCC may discourage manufacturers and producers from developing new products that might be equally as compatible, but not within the FCC's rigid standards. The means of achieving compatibility are best left to the industry.

Under the FCC's current proposal, the traditional FCC complaint process will be dramatically altered for Section 255 complaints. While some of the proposed changes are good, SBC thinks others are ill-advised. First, the FCC fails entirely to devise a mechanism for addressing complaints that raise industry-wide, as opposed to company-specific, problems. SBC therefore asks the Commission to consider establishing an interdisciplinary panel of technical experts and disability advocates to whom industry-wide complaints could be referred for resolution.

Second, if the FCC decides to implement its "fast-track" proposal, a provider or manufacturer must be given more than five days to respond to a consumer complaint. The Commission itself acknowledges the "likely complexity of many Section 255 complaints." Id. ¶ 150. It therefore is wholly unrealistic that a solution to such complex problems can be devised and implemented in only five days. The Commission should propose a fifteen- or thirty-day deadline to respond, with an opportunity to extend that deadline if substantial efforts to resolve the dispute are underway.

Third, while the FCC's willingness to allow complainants and respondents to communicate over a variety of media -- including by audio cassette and over the telephone -- is well intended, it may actually harm the individuals it is designed to accommodate. As the Commission elsewhere recognizes, if the format of a communication is not permanent, the proceeding will lack "an appropriate record for decision-making" (id. ¶ 152) and will be beset by misunderstandings. SBC therefore proposes that the Commission require a permanent written format for all complaints, response reports, and statements by the complainant regarding his or her decision to invoke the formal complaint process.

Fourth, the FCC's proposal to abandon customary standing requirements likewise might do more harm than good. Without any standing requirement, for example, a company could file a complaint against its competitor purely for harassment. Surely, Congress did not intend to allow for such a (mis)use of the complaint process. Rather, as the statutory language shows, Congress was concerned about "individuals with disabilities." SBC recommends, therefore, that the FCC require that a complainant show that he either is an individual who is prevented from accessing or using the respondent's product, or is an association or person acting on behalf of such an individual.

Finally, the FCC should reconsider its decision to discard the traditional pleading requirements for formal complaints. For a respondent properly to reply, a formal complaint must contain a certain degree of specificity, as well as affidavits and documentation to support the allegations. Also, if the Commission is going to impose a filing fee, it must be the same for every complaint -- regardless of the identity of the respondent.

SBC submits that all of its proposals for modifying the complaint process will -- consistent with the Commission's stated objective -- "focus [the FCC's] resources efficiently by handling complaints in a streamlined, consumer-friendly manner with an eye toward solving problems quickly." Id. ¶ 3.

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COMMENTS OF SBC COMMUNICATIONS INC.

Long before the 1996 Act was passed, SBC Communications Inc. ("SBC") and its subsidiaries were dedicating resources and implementing procedures to ensure that individuals with disabilities could use and enjoy the benefits of telecommunications services and equipment. For many years, SBC subsidiary Pacific Bell has conducted a Deaf and Disabled Services internal business group to assist customers with disabilities in meeting their communications needs and to coordinate the company's efforts to develop products for the disability community. In 1993, Pacific Bell convened an outside advisory group, the Advisory Group for People with Disabilities, to meet with product managers and officers and provide recommendations on accessibility issues. A similar, but separate, advisory group counsels the company on accessibility issues relating to wireless service. Building upon the ongoing work of these groups, SBC adopted a Universal Design Policy which requires each of its subsidiaries to design new

products and services in a way that makes them accessible to the broadest range of consumers, including individuals with disabilities, the elderly, and children. (A copy of the Policy is attached as Attachment A.)

SBC views Section 255 of the Telecommunications Act of 1996, and this rulemaking proceeding, as a welcome opportunity to build upon these initiatives. SBC agrees with the Commission that the best way to achieve Congress's objective in Section 255 -- to ensure that individuals with disabilities are able to access and use telecommunications equipment and services -- is for the FCC to "allow industry the flexibility to innovate and to marshal its resources toward the end goal, rather than focusing on complying with detailed implementation rules." NPRM ¶ 3. Rigid rules in the fast-changing world of telecommunications would function only to stifle the innovation that Congress hoped to encourage through the 1996 Act.

Guided by that principle, SBC, on behalf of itself and its subsidiaries, submits the following comments on the NPRM. To the greatest degree possible, the comments address issues in the same order as the NPRM.

DISCUSSION

I. IN DEFINING THE TERMS AND SCOPE OF SECTION 255, THE FCC SHOULD ADHERE TO COMMON SENSE AND THE PLAIN STATUTORY LANGUAGE

A. Section 255 Does Not Apply to Non-Telecommunications Services Such As Information Services [NPRM ¶ 42]

SBC is committed to designing information services to have the accessibility features that Section 255 mandates for telecommunications service and equipment. The Universal Design

Policy, which applies to all of SBC's subsidiaries,[1] pledges each company to create new products and services -- including information services -- that address the needs of customers with disabilities. See Attachment A. SBC believes that this is not only the right thing to do, it is good business. By designing products and services to have the greatest possible access, SBC will reach the greatest number of potential customers. If the company ignored the needs of the disability community, it could forfeit the chance to serve 49 million Americans.[2]

While SBC thinks it is important to make its information services accessible, Section 255 plainly does not require it. By its express terms, Section 255 applies only to "telecommunications equipment," "customer premises equipment," and "telecommunications service." 47 U.S.C. § 255(b), (c). Consistent with that plain language, the Act's legislative history, and past FCC precedent, the FCC tentatively concluded that Section 255 does not apply to "information services," such as voice mail and electronic mail. NPRM ¶ 36 ("'Information services' are excluded from regulation" under Title II); id. ¶ 42 (information services "fall outside the scope of Section 255").

The FCC's interpretation is correct. It is, indeed, the only interpretation that would be consistent with Congress's intent and the FCC's past understanding of the strict dichotomy between "telecommunications service" and "information service." As the FCC explained in a recent report, Congress intended that "the two categories" of services "be separate and distinct,

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[1]The Policy applies to all subsidiaries including SBC's information services providers -- Southwestern Bell Internet Services, Pacific Bell Internet Services, Nevada Bell Internet Services, Southwestern Bell Messaging Services Inc., and Pacific Bell Information Services.

[2]FCC Disabilities Issues Task Force Homepage <http://www.fcc.gov/dtf/welcome.html>.

and that information service providers not be subject to telecommunications regulation." Report to Congress, Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, ¶ 43 (Apr. 10, 1998) (emphasis added). As used in the 1996 Act, the two categories of services "are mutually exclusive." Id. ¶¶ 13, 39; id. ¶ 33 ("Commission precedent . . . indicat[es] that telecommunications services and information services are 'separate, non-overlapping categories.'"). Thus, Congress's use of the phrase "telecommunications service" in Section 255 simply cannot be read to include any information service. Id. ¶ 42.

Congress's decision to exclude information services from all Title II regulation (including Section 255) is understandable. The FCC has stated that regulating the information-services market "would only restrict innovation." Report to Congress, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 98-67, ¶ 26, (rel. Apr. 10, 1998) ("Report to Congress"). Eighteen years ago, in fact, the Commission decided in its Computer II proceeding that the best way to promote a healthy and competitive enhanced-services industry was freedom from regulatory oversight.[3] The exponential growth in that industry has proven the FCC right. Congress recognized this success story when drafting the 1996 Act, and decided to leave information services free of any regulation -- including the obligations of Section 255. Report to Congress ¶¶ 37, 45.

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[3]Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77 F.C.C.2d 384 (1980), recon., 84 F.C.C.2d 50 (1980), further recon., 88 F.C.C.2d 512 (1981), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

B. Section 255 Applies to All Telecommunications Providers, Including Resellers, and to All Manufacturers, Whether Foreign or Domestic, Who Sell Equipment to the Public [NPRM ¶¶ 45-46, 57-60]

SBC agrees with the Commission's proposed definitions for the terms "telecommunications providers" and "equipment manufacturer." Specifically, SBC agrees that the term "provider," as used in Section 255, means any entity "offering . . . . telecommunications services to the public," including resellers[4] and "without regard to the accessibility measures taken by the service provider who originates the offering." NPRM ¶ 45. Any reseller of telecommunications service would certainly say that it "provides" telecommunications service; hence it is "[a] provider" of such service within the plain terms of the statute. 47 U.S.C. § 255(c).

If a provider of telecommunications service also provides a non-telecommunications service, however, it is subject to Section 255's obligations "only to the extent it is providing telecommunications services." NPRM ¶ 46. This remains true even if the telecommunications service and non-telecommunications service originate from the same facilities. Any other construction would be contrary to both the plain language of the statute and Congress's intention to separate telecommunications services from information services. See discussion supra.

SBC also endorses the definition of "manufacturer" proposed by the Access Board and adopted by the Commission. NPRM ¶¶ 59-60. By defining a manufacturer as "a final assembler" of component parts -- an "entity that sells [telecommunications equipment or CPE] to

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[4]By "resellers," SBC means those carriers who, in accordance with Section 251(c)(4) of the Act, purchase telecommunications service at wholesale rates from another carrier to resale at retail to subscribers who are not telecommunications carriers.

the public or to vendors that sell to the public," id. ¶ 59 (internal quotations omitted) -- the Commission clearly affixes responsibility for compliance with Section 255.

Finally, SBC agrees that, in order to maintain parity between foreign and domestic manufacturers, Section 255 must apply "to all manufacturers offering equipment for use in the United States, regardless of their location or national affiliation." Id. ¶ 58.

C. As the FCC Proposes, Section 255's "Accessible To and Usable By" Language Should Be Viewed As Imposing a Single Obligation, Rather Than Two Separate Requirements [NPRM ¶¶ 73-75]

Section 255 provides that all telecommunications equipment, CPE, and telecommunications service must be "accessible to and usable by" individuals with disabilities, if it is "readily achievable" to do so. 47 U.S.C. § 255(b), (c). In the NPRM, the Commission tentatively concludes that "there is no reason to distinguish" between "accessible to" and "usable by" for purposes of Section 255. NPRM ¶ 73. SBC agrees. These overlapping terms can be viewed, as the FCC suggests, to impose a single obligation to ensure that an individual with disabilities may "actually use" the functions of a telecommunications service or piece of equipment. Id. (emphasis in original). SBC also agrees that functional use generally will require accessible "support services," such as product information and instructions. Id. ¶ 75.

In the NPRM, the Commission lists a series of input, output, control, display, and mechanical functions in paragraph 74, stating that they will be used as a "basis for evaluating accessibility obligations," id. ¶ 75. SBC requests that the FCC explain how these functions will be weighed or considered in such evaluations.

D. For Purposes of Section 255(d), the FCC Should Maintain a List of "Commonly Used" Peripheral Devices and Specialized CPE, but Should Not Define "Commonly Used" with Reference to Either the Equipment's Cost or Its Listing on a State's Equipment Distribution Program [NPRM ¶ 90]

Section 255(d) provides that, when compliance with subsections (b) and (c) is not "readily achievable," the manufacturer or provider must "ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable." 47 U.S.C. § 255(d). In order for providers and manufacturers to meet that obligation, it is imperative that the Commission define "commonly used" in a way that makes it absolutely clear what equipment meets that standard.

SBC submits that the only way to do that—and thereby to ensure satisfactory compliance and prevent endless disputes about whether a particular piece of equipment meets the definition—is for the Commission to maintain an up-to-date list of "commonly used" peripheral devices and specialized CPE. The FCC should develop such a list in cooperation with representatives from the disability community and telecommunications industry, building on the work of organizations like the Trace Center.[5] The list could be accessed easily on the FCC's website.

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[5]The Trace Center is an interdisciplinary research, development, and resource center on technology and disability. It is part of the Waisman Center and the Department of Industrial Engineering at the University of Wisconsin-Madison. Since the early 1980's, the Trace Center has been funded as a Rehabilitation Engineering Research Center ("RERC") through the National Institute on Disability and Rehabilitation Research, U.S. Department of Education. Along with Gallaudet University and the World Institute on Disability, Trace was designated as part of a new RERC on "Telecommunications." See Trace Center Homepage <http://www.trace.wisc.edu>.

The FCC should not create a "rebuttable presumption" that a device is "commonly used" if it is used in any State's equipment distribution program for persons with disabilities. NPRM ¶ 90. A "presumption" would not eliminate the potential for disputes; it would simply shift the focus of the dispute to whether the presumption is appropriate in a particular case. More importantly, the State lists are not always well maintained. A new device or piece of equipment can take considerable time to make its way through the local bureaucracy before appearing on a State's list, and devices that are no longer "commonly used" are not promptly removed. While it is not easy to maintain an updated list in such a dynamic industry, it is essential to do so. A single national list, which would become the focus of the industries' and regulators' attention, is more likely to remain current.

SBC also recommends against the FCC's proposal to consider the cost of the peripheral device or CPE -- or whether it is "affordable" -- in determining whether it is "commonly used." Id. Any attempt to incorporate cost or affordability in determinating whether a product is "commonly used" runs the risk of having individuals without disabilities assess the "value" of a product for an individual with a disability -- something the FCC should not do.

A cost comparison would provide the Commission with little information, in any event. There are countless types of peripheral devices designed to assist individuals with a wide variety of physical disabilities. Comparing the cost of different devices -- e.g., comparing a TTY to TeleBraille -- would be meaningless.

Rather than employing a rebuttable presumption or using cost as a measure for use, the FCC should adhere closely to the commonsense meaning of "commonly used" -- as a reference to

the number of users of a product relative to the number individuals who have the disability for which the product was designed.

E. How a Manufacturer or Provider Makes Equipment or Service "Compatible" with Commonly Used Peripheral Devices or Specialized CPE Should Be Left to the Industry [NPRM ¶ 92]

While the FCC is equipped to say whether, on final analysis, a piece of equipment or service is compatible with a commonly used peripheral device or specialized CPE, the FCC should not try to prescribe *how* that compatibility should be achieved. The FCC should focus on the usability of a product. The specific devices or criteria to achieve that usability is a technical decision that belongs to the industry.

If the FCC prescribed the means of compatibility, as suggested by the "five criteria" listed in the NPRM (¶¶ 91-92), manufacturers and providers would rest upon these accepted means and would be reluctant to develop new technologies for fear they would not be FCC approved. For example, the NPRM proposes to adopt "TTY connectability" and "TTY signal compatibility" as bases for determining compatibility. Id. ¶ 91. If the FCC adopts those as baseline criteria, the criteria may be met, but manufacturers and providers will be less likely to consider adding text-based features, which are quickly becoming more popular than TTY in the deaf and hard of hearing community.

In order to avoid this deterrent on innovation, SBC suggests that manufacturers and providers working together be allowed to develop industry standards and standard interfaces for compatibility, with input from the disability community. Such industry-developed guidelines

would not hamper competition and may actually help small companies entering the marketplace by identifying clear standards to be met.

F. The Statutory Definition of "Readily Achievable" Contemplates a Case-By-Case Inquiry [NPRM ¶¶ 94-123]

"Readily achievable" is defined in Section 255 as having "the meaning given to it by section 301(9) of [the Americans with Disabilities Act] (42 U.S.C. [§] 12181(9))." 47 U.S.C. § 255(a)(2). That provision, in turn, provides that "[t]he term 'readily achievable' means easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9) (emphasis added).[6]

Application of this "broad" definition, the FCC rightly concludes, "will be driven by the facts of particular cases." NPRM ¶¶ 97, 99, 122. While it is worthwhile to formulate factors to be considered in applying the definition, those factors should not become so rigid and formulaic that they defeat the virtues of the simple and flexible definition. The FCC must take care, that is, not to lose sight of the statutory definition, which should always guide the ultimate determination of whether an action is "readily achievable."[7]

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[6]See also S. Rep. No. 104-23, at 52 (1995) ("The term 'readily achievable' means 'easily accomplishable and able to be carried out without much difficulty or expense.'").

[7]The term "readily achievable" appears in subsections (b), (c), and (d) of Section 255. The FCC seeks comment regarding the extent to which the term should be interpreted the same way in the different provisions. NPRM ¶ 93. It is a "basic canon of statutory construction" "that identical terms within an Act bear the same meaning." Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 479 (1992). Therefore, the FCC should interpret "readily achievable" in the same manner in each provision, applying the same definition -- "easily accomplishable and able to be carried out without much difficulty or expense" -- and the same factors.

The FCC proposes three factors to be considered in determining whether an action is "readily achievable" -- its feasibility, expense, and practicality. See NPRM ¶¶ 100-123. SBC generally endorses the FCC's approach.

As the Commission points out, the starting point for determining whether an action is "readily achievable" is determining whether it is feasible. If it is not technically possible nor legal to incorporate a particular feature in a particular equipment or service, the inquiry ends. See id. ¶ 102.

If a feature is feasible, the analysis turns to the feature's expense. As the FCC concluded, "for products offered in the public marketplace, the relevant expense is a 'net' figure," which includes "both the cost of the feature and the additional income the feature will provide." Id. ¶ 103.[8] Accordingly, a manufacturer or service provider must be prepared to produce a financial analysis in order to establish that a feature is not "readily achievable."

Finally, the inquiry should take into consideration whether, given the expenses involved, incorporating the feature is practical. That commonsense analysis requires an appreciation of the resources available to the manufacturer or service provider. As the FCC proposes, the appropriate resources to consider are those of the corporation (or similar entity) that has legal control over the telecommunications product. Id. ¶ 109. The resources of a parent corporation generally should not be considered. See United States v. Bestfoods, No. 97-454, 1998 U.S.

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[8]The FCC also proposes to weigh "the extent to which an equipment manufacturer or service provider is likely to recover the costs" of a proposed feature when considering whether the feature is "practical." See NPRM ¶¶ 115-117. The Commission should clarify the extent to which these factors overlap.

LEXIS 3733, at *19-*24 (U.S. June 8, 1998) (a "bedrock principle" of corporate law is the recognition and "respect for corporate distinction[]" between a parent and its subsidiary).[9]

Under the FCC's proposal, whether a feature is practical will also depend upon its effect in the marketplace (i.e., will the modification make the product or service less accessible to persons with other disabilities or to the mass market) and the extent to which the equipment manufacturer or service provider can recover its costs. NPRM ¶¶ 111-117. SBC's Universal Design Policy attempts to address the marketplace considerations by "designing products so that they are usable by the broadest possible audience." See Attachment A at 1. SBC thereby seeks to avoid the situation in which accessibility for one constituency means the loss of accessibility to another. SBC's Policy also should substantially eliminate the issue of cost recovery. By considering accessibility "at the design stage, [rather] than later at the retrofit stage," id., the costs incurred in developing a new feature would be minimized. Moreover, if the feature is incorporated into a service which is used by the general population -- which should happen in many if not most instances -- the costs would be spread over the entire population of users.

There is no question that trying to retrofit an accessibility feature onto an existing product would be more costly and difficult than incorporating such features into new products. See NPRM ¶ 120. This plain fact raises another consideration in determining whether a feature is practical -- timing. Whether a technically feasible feature is "readily achievable" will depend upon whether it is in the design phase, in production, or in some other stage of the product's life

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[9]The only time a parent's resources should be considered is if the circumstances (and disregard for corporate form) are such as would justify piercing the corporate veil in assessing liability.

cycle. The FCC has proposed -- we think correctly -- "that once a product is introduced in the market without accessibility features that were not readily achievable at the time [of development], Section 255 does not require that the product be modified to incorporate subsequent, readily achievable features." Id. This conclusion is consistent with the plain, prospective language of Section 255(b) which requires that a manufacturer ensure that its equipment "is designed, developed, and fabricated" to be accessible. 47 U.S.C. § 255(b).[10] It is also consistent with the legislative history which expressly states that the drafters of Section 255(b) and (c) "intend[]" for those "requirement[s] to apply prospectively to such new equipment manufactured after the date for promulgation of regulations by the Commission." S. Rep. No. 104-23, at 53 (emphasis added). Congress, therefore, plainly expected the requirements of Section 255 to be prospective only.

II. EFFICIENCY SHOULD BE THE COMMISSION'S FIRST PRINCIPLE IN DESIGNING AN EFFECTIVE COMPLAINT PROCESS[11]

SBC commends the FCC's effort to develop alternative, informal, and more streamlined processes for resolving consumer complaints under Section 255. SBC believes that the

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[10]SBC agrees with the Commission's conclusion that, because timing is considered in determining whether a product or service feature is readily achievable, there is no need for a general grace period for compliance. NPRM ¶ 121. But a grace period should be allowed for implementing changes to some support services, such as billing, which will require agreements among several service providers and consequently may take a few months to establish.

[11]The FCC is correct in concluding that Section 255 precludes private rights of action to enforce its requirements and, thus, all complaints must be brought through the Commission. NPRM ¶ 34. The statutory language permits no other conclusion. 47 U.S.C. § 255(f) ("Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder.").

Commission's proposals for introducing a pre-complaint referral, a fast-track phase, and alternative dispute resolution among the available options are positive initial efforts for addressing accessibility problems. SBC, however, has the following concerns about the proposed complaint process, starting with a general concern about the NPRM's failure to consider a means for addressing industry-wide accessibility problems.

A. The Commission Should Propose a Mechanism for Addressing Complaints That Pose Industry-Wide Problems

The FCC addresses the complaint process as a piecemeal process -- a single complainant challenging a single manufacturer's or service provider's product. Although in many situations this approach will be appropriate, in others it will not. In some cases, a complaint will pose an industry-wide problem which needs an industry-wide solution. It makes little sense in those instances to adjudicate an individual complaint over and over again across the country. Such a procedure, SBC submits, would be inefficient and ineffective.

SBC therefore asks the Commission to consider establishing an interdisciplinary panel of experts and disability advocates to whom industry-wide complaints could be referred for resolution. The FCC staff that intakes Section 255 complaints would need to learn which complaints are problems with particular companies and which represent systemic concerns. The FCC could direct the latter to the panel to develop comprehensive solutions. The panel then would report back to the Commission with its recommendations for implementation. Solving problems on an industry-wide basis would better achieve the Commission's stated objective of "focus[ing] [its] resources efficiently by handling complaints in a streamlined, consumer-friendly manner with an eye toward solving problems quickly." NPRM ¶ 3; see also id. ¶ 124.

B. For Individual Complaints, the Best Solution for Both Parties and the Commission Is To Avoid the Complaint Process Entirely By Encouraging the Consumer To Contact the Manufacturer or Provider Directly [NPRM ¶ 128]

The FCC proposes that, when it is first contacted by a consumer with a Section 255-type complaint, it will "encourage the consumer to directly contact the manufacturer or service provider involved." NPRM ¶ 128. Only if the consumer remains unsatisfied after making that contact would it be necessary for the consumer to return to the Commission to initiate the complaint process. Id.

SBC supports this informal approach. It is, without a doubt, the best way to conserve the Commission's resources and to have the consumer's problems resolved quickly and without bureaucratic hassle. In many instances, the manufacturer or service provider will be able to address the purported problem on the telephone, by providing the consumer with additional information or by instructing the consumer on the use of a product.

The FCC plans to supply consumers with the information needed to contact the right manufacturer or provider. Id. The staff appointed to make these referrals should be well educated about access issues and the industry, so that it can direct the consumer to the correct contact. Nothing would frustrate a consumer more than being told that the contact supplied by the Commission was wrong and that he or she must return to the Commission for another name and number.